

A trademark is any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors. (World Intellectual Property Organisation).

1. Trademarks are registered under the Trade Marks Act Chapter 401 of the Laws of Zambia (“TMA”). The Act does not offer protection to unregistered marks and the owner of an unregistered mark cannot prevent the registration of a similar or identical mark under the TMA. (DH Brothers Industry (PTY) Limited vs. Olivine Industries (PTY) Limited (Appeal No.74/2010) [2012] ZMSC 17)

2. The relevant trade mark authority is the Patents and Companies Registration Agency (“PACRA”). Upon registration the owner of the mark acquires a number of exclusive ownership rights, such as the right to use and prevent other people from copying and counterfeiting their mark.

3. Zambia follows the first to file rule: under this rule, the first to file for registration of their marks are granted trade mark rights and given priority over others regardless of actual use of the marks by the person applying for registration or existence of prior users of the same marks in commerce. (Jasbevas General Dealers vs Ramas Suppliers Limited (Application No. 733/2020 “RAMAS BANANA WINE & LABEL”) [2021])

4. It takes an average of six to eight months to register a trademark at PACRA if there is no opposition to registration of that mark.

5. Once a trade mark is registered it is initially valid for a term of seven (7) years and after renewal for a term of fourteen (14) years from the date of expiration.

6. Registration of a trade mark under the TMA only gives the owner protection of the law within Zambia. However, for international protection, the proprietor has the option of registering their trade mark under the Madrid Protocol for the International Registration of Trade Marks (“The Madrid Protocol”). Notably, the Madrid Protocol only applies to countries which are party to the Protocol. On the contrary Zambia has not made the Madrid Protocol part of its law and therefore it does not apply. (see Olympic Milling Limited vs Comite International Olympique Application Numbers 123-125/2017 ‘OLYMPIC’ [2021])

7. In very limited circumstances, a person with a legitimate claim over a registered trademark may apply for the removal from the Register of a mark on the following grounds: (i) The non-insertion in or omission from the register of any entry; (ii) Any entry made in the register without sufficient cause; (iii) Any entry wrongly remaining on the register, or (iv) Any error or defect in any entry in the register. (see Section 37 of the TMA).